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No. 443

In the Supreme Court of the United States

OCTOBER TERM, 1951

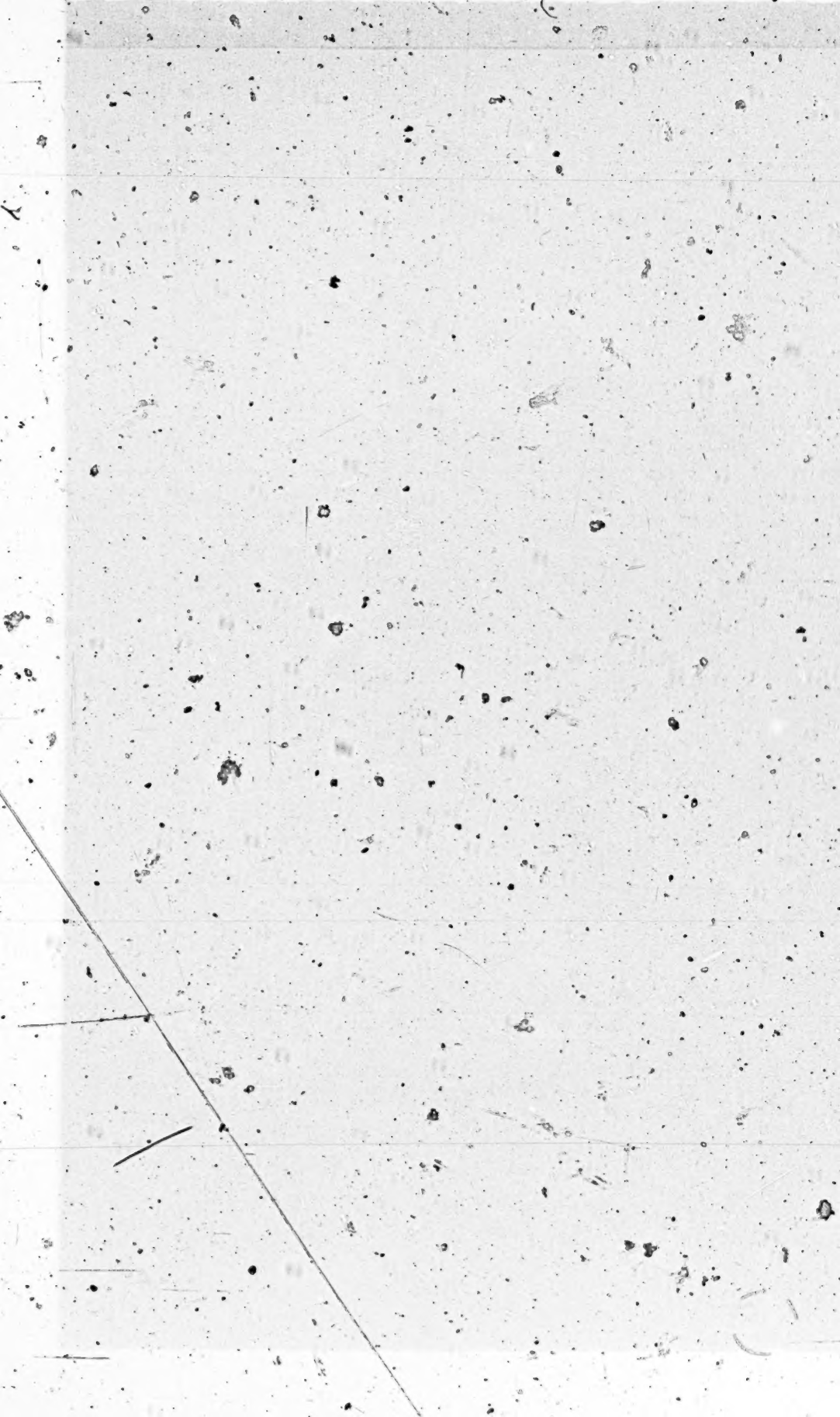
UNITED STATES OF AMERICA, PETITIONER,

v.

EFROIM SPECTOR

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

BRIEF FOR THE UNITED STATES



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OPINION BELOW

The opinion of the District Court dismissing the indictment (R. 8-13) is reported at 99 F. Supp. 778.

JURISDICTION

The order of the District Court dismissing the indictment was entered October 15, 1951, *nunc pro tunc* as of September 12, 1951 (R. 13). The United States filed its notice of appeal to this Court on October 12, 1951, and a supplemental notice of appeal on October 19, 1951 (R. 15). Probable

jurisdiction was noted by this Court on January 2, 1952 (R. 16). The jurisdiction of this Court to review on direct appeal the order of the District Court dismissing the indictment based on the constitutionality of the statute on which the indictment is founded is conferred by the Criminal Appeals Act, 18 U.S.C., Supp. IV, 3731. See also Rule 37(a)(2) F.R. Crim. P.

QUESTION PRESENTED

Section 20(c) of the Immigration Act of February 5, 1917, as amended by Section 23 of the Internal Security Act of 1950, 64 Stat. 1010, 8 U.S.C., Supp. IV, 156(c), makes it a criminal offense for an alien, ordered deported for advocating the overthrow of the Government by force or violence or for certain other reasons to "willfully fail or refuse to make timely application in good faith for travel or other documents necessary to his departure." The question presented is whether this provision is so vague and indefinite as to violate the Fifth and Sixth Amendments.

STATUTE INVOLVED

Section 23 of the Internal Security Act of 1950, 64 Stat. 1010, 8 U.S.C., Supp. IV, 156, which amends Section 20 of the Immigration Act of February 5, 1917, is set forth in Appendix A, *infra*, pp. 25-32.

STATEMENT

An indictment in four counts was returned against appellee in the United States District

Court for the Southern District of California, alleging that he was an alien who had entered the United States from Russia in 1913; that an order of deportation had been entered against him on August 13, 1930, by reason of the fact that he advocated the overthrow of the Government by force and violence; and that, within six months after September 23, 1950, he did "wilfully fail to depart from the United States" (count one); "wilfully refuse to depart from the United States" (count three); "wilfully fail to make timely application in good faith for travel or other documents necessary to his departure from the United States" (count two); "wilfully refuse to make timely application in good faith for travel or other documents necessary to his departure from the United States" (count four) (R. 1-2).

Appellee moved to dismiss the indictment (R. 3-6). The District Court overruled the motion as to counts one and three, but sustained it as to counts two and four. The court held (R. 8-13) that the portion of the statute under which those counts was laid was unconstitutionally vague and indefinite in two respects:

(1) it did not specify the nature of the travel documents necessary for departure;

(2) it did not specify to which country or to how many countries the alien should make application.

SPECIFICATION OF ERRORS TO BE RELIED UPON

1. The District Court erred in dismissing the second and fourth counts of the indictment.

2. The District Court erred in holding unconstitutionally vague and indefinite that portion of Section 23(c) of the Internal Security Act which makes it a felony for certain aliens against whom orders of deportation have been issued to "willfully fail or refuse to make timely application in good faith for travel or other documents necessary to his departure."

SUMMARY OF ARGUMENT

The phrase "travel or other documents necessary to his departure" is not too vague for the ordinary person to understand. Both the normal meaning of the phrase and its context in a statute dealing with deportation make it plain that the phrase means passports, visas, or other documents necessary for entrance into a foreign nation. The succeeding sentence of the statute, which refers to "passports, other travel documents, or deportation facilities," makes this clear beyond question. The provision involved is directed only at aliens, all of whom have entered the United States from a foreign country, and who are, therefore, in a peculiarly favorable position to know what "travel documents" in this context means. In addition, the possibility of punishment of the innocent is removed by the unusual double-barreled restriction of the prohibition to persons who "*willfully* fail or refuse to make timely application *in good faith*"

for the necessary documents. Cf. *United States* v. *Ragen*, 314 U.S. 513, 524; *Boyce Motor Lines* v. *United States*, decided January 28, 1952; *Screws* v. *United States* 325 U.S. 91. This is particularly true with respect to the offense of refusing to apply for the necessary documents, since "refuse" in itself connotes deliberate, intentional conduct.

Nor is the statute invalid for indefiniteness with respect to the country to which application should be made. Section 20(c) must be read with Section 20(a), which provides that the alien may name the country to which he shall be deported, and that if he does not do so the Attorney General shall make the selection from among the nations specified in the statute. In either case, there can be no uncertainty in the alien's mind as to the country to which he must apply, for it is either a country of his own choice or one selected by the Attorney General. On this aspect of the case, the requirement of willfulness and bad faith also makes it plain that no one can be convicted for what he would not have known was unlawful.

The fact that a statute does not contain a prohibition but an affirmative command does not change the applicable principles. Whether the congressional mandate is affirmative or negative, the question is whether a normal person will understand what the statute prohibits or commands, whether he can be punished for conduct which may be innocent because of vagueness of the law. The

distinction between an affirmative and a negative command cannot be reconciled with *United States* v. *Ragen, supra,* in which the statute affirmatively required the filing of income tax returns with only "reasonable" deductions for salaries.

Unquestionably, this statute is no more vague and indefinite than others which have been upheld by this Court. E. g., *Boyce Motor Lines* v. *United States, supra; Jordan v. De George,* 331 U.S. 223.

ARGUMENT

The Questioned Portion of Section 23(c) of the Internal Security Act of 1950 Clearly Establishes an Ascertainable Standard of Guilt.

Introductory—the statute and its background.

The pertinent portion of Section 20(c) of the Immigration Act of 1917 (as rewritten in Section 23 of the Internal Security Act of 1950, 64 Stat. 1010, 8 U.S.C., Supp. IV, 156(c)) reads as follows:

> Any alien against whom an order of deportation is outstanding under [various named statutes] * * * who shall willfully fail or refuse to depart from the United States within a period of six months from the date of such order of deportation, or from the date of the enactment of the Subversive Activities Control Act of 1950, whichever is the later, or shall willfully fail or refuse to make timely application in good faith for travel or other documents necessary to his departure, * * * shall upon conviction be guilty of a felony, and shall be imprisoned not more than ten years: * * *

Section 20 (c) was originally introduced as a part of the Hobbs Bill, H.R. 10, 81st Cong., subse-

quently incorporated, with some changes, in the Internal Security Act. Its object was to deal with the problem presented by the fact that many aliens who had been ordered deported remained in this country indefinitely because the countries of their nationality refused to receive them. H. Rep. 1192, 81st Cong., 1st Sess., pp. 7-10; S. Rep. 2239, 81st Cong., 2d Sess., pp. 4, 6-8. Under then existing legislation, nothing could be done to enforce such orders. A foreign country could keep an agent in the United States indefinitely by the simple method of refusing to issue travel documents when the agent was ordered deported.

In hearings on the originated bill, Congress learned that, as of April 15, 1949, there were 3,278 unenforceable warrants of deportation outstanding, including 2,147 for iron curtain nationals (See Reports, *supra*, and Hearings before Subcommittee 1, House Judiciary Committee on H.R. 10, 81st Cong., 1st Sess., pp. 4-5). The Attorney General presented forty case histories, including that of appellee, as illustrations of this unfortunate situation.[1] The committee report noted as to appellee in

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[1] The report of the House committee contains the following language (H. Rep. 1192, 81st Cong., 1st Sess., p. 8), which was repeated by Senator McCarran on the floor of the Senate (96 Cong. Rec. 14180):

> First is the case of Frank E. Spector, born in Odessa, Russia, and now living in Los Angeles, Calif. He served a jail sentence in California in 1930 and was ordered deported by the Attorney General that same year, being a person who advocates and teaches the overthrow by force or violence of the Government of the United States. Spector showed up in Los Angeles about 1921. Since then

particular that "He has been openly and usually defiant of this Government's efforts to carry out the law in his case."[2] The new Section 20 was designed to correct the evil presented by such cases as that of appellee. It did this in several ways. By Section 20 (a) it allowed an alien to be deported to the country of his preference, and enlarged the authority of the Attorney General to determine the country to which an alien unlawfully in the United States might be deported if he made no choice.[3] It provided for supervision of aliens against whom orders of deportation have been outstanding more than six months. (Sec. 20 (b).) And by Sec. 20 (c), part of which is here involved, it imposed on aliens ordered deported as criminals, immoral per-

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he has had a record of continuous activities and leadership in the Communist party. Last year he defied the authority of the California State Senate and was threatened with contempt. He was told that contempt might be ground for deportation from the United States. In reply Spector retorted, "You are too late, Mr. Tenney, my order of deportation has been issued 21 years ago and I am still here." The Attorney General's comment on Spector is as follows:

"As a result of numerous refusals on the part of Russia to issue a travel document to the alien, he is free to travel in the United States, and continue his communistic activities. He has been openly and usually defiant of this Government's efforts to carry out the law in his case. We have no means whereby he can be taken into custody. In view of his ability as a leader and organizer, he is a distinct threat to the national security of the United States."

[2] See note 1, *supra*.

[3] Under Section 20(a) an alien is to be deported, first to the country of the alien's preference if it will accept him; then to various countries to which he has ties, such as the country from which he entered, a country in which he resided, or the country of birth or nationality; and finally, if none of the above is practicable or advisable, to any country willing to accept him. See p. 25, *infra*.

sons or subversives the affirmative duty both to cooperate with the Attorney General and to take steps on their own behalf to effectuate their departure. See p. 30, *infra*.

The Committee reports and debates on the Hobbs Bill disclosed that the inability to deport such aliens stemmed in part from the alien's own unwillingness to take the steps necessary for departure. Experience had demonstrated that foreign countries would sometimes accept an alien making his own application for departure but not a governmental request to allow the deportation.[4]

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[4] H. Rep. 1192, 81st Cong., 1st Sess., p. 8; S. Rep. 2239, 81st Cong., 2d Sess., p. 7:

> The second case is that of Badrig Selian, 50, a native of Turkey. He is an active member of the Communist Party and one of their most important publicists in the United States. In 1930 his deportation was ordered but refused by Turkey and by Syria, which now controls his birthplace. Of his own free will he left the United States last year after the Government had failed throughout 18 years to get him out of the country. Concerning the Selian case the Attorney General says that—
>
> "this Communist declined to leave the United States, and since no country of origin would take him we were obliged to permit him to remain here at large. When it suited his own purposes, however, he was able through his own efforts to obtain a passport."

96 Cong. Rec. 10675, Representative Hobbs:

> * * * although in one case 13 applications of your Government were turned down flat, cold, and then a few months later when the man himself applied he got it in 5 days.

Hearings on S. 1832 before Subcommittee on Immigration and Naturalization of the Senate Judiciary Committee, 81st Cong., 1st Sess., p. 326:

> Attorney General Clark. * * *
>
> Since April 1, 1948, nine other persons known to be subversives who were under warrants of deportation have departed from the United States at their own expense.

In addition, there is difficulty in deporting aliens who will not obtain the necessary travel documents, inasmuch as foreign nations generally require such documents even for aliens deported by the Government.

These difficulties were noted in the Committee Reports on H. R. 10 (H. Rep. 1192, 81st Cong., 1st Sess., pp. 7, 9, 10; S. Rep. 2239, 81st Cong., 2d Sess., pp. 6, 8):

> But over a period of years there have arisen hundreds of cases of aliens who have been ordered deported by the duly constituted authorities of this Nation who could not be deported because of the failure or refusal of foreign governments to grant passports for their return and, in some instances, *by refusal of the aliens themselves to cooperate or take steps to obtain travel documents* or to leave the United States even though they had been ordered deported.
>
> * * * * * *
>
> The gravity of the situation stems from the absence of any power now placed in the Attorney General to exercise continuing supervision and control over aliens who have been ordered deported but who, either because of *lack of cooperation* by foreign governments *or by the aliens themselves,* cannot be deported from the United States * * *.
>
> * * * * *
>
> The committee has no doubt and experience has shown that many such individuals,

> who under existing law make no move to leave the United States once they realize that their deportation cannot be accomplished by our Government, will find it possible and preferable to arrange to leave the United States rather than to remain and subject themselves to continued supervision by Government officials or the possibility, in some cases, of undergoing indefinite periods of detention. *Experience indicates that aliens themselves often arrange to leave this country even after their governments have refused to issue travel documents for their deportation at the request of this Government.* [Italics supplied]

Representative Walter, a Member of the House Committee, subsequently stated during the debate (96 Cong. Rec. 10449):

> There are outstanding today nearly 3,000 orders for deportation of that type of person, and by the refusal of a foreign country to take them back *or by their refusal to attempt to obtain the necessary travel documents* they enjoy complete freedom of movement and action because they are released on bonds of $500. [Italics supplied]

As originally proposed, H. R. 10 would have stimulated activity on the part of the alien ordered deported by authorizing the Attorney General to detain the prescribed classes of aliens until departure could be arranged. However, the Senate, because of doubts as to the constitutionality of such indefinite detention, substituted the provisions for

criminal punishment of aliens who willfully failed to depart. S. Rep. 2239, 81st Cong., 2d Sess., p. 8.

The clause involved in this case, requiring timely application for travel documents, was inserted when the content of H. R. 10 was incorporated in the bill (S. 4037, 81st Cong., 2d Sess.) which became the Internal Security Act. The subsequent legislative history contains no comment upon, explanation of, or opposition to this particular provision. But the earlier description of the problem before Congress makes it quite clear that the purposes of the clause in question were both to prevent an alien ordered deported from frustrating the Government's efforts by *refusing* to apply for or sign the necessary travel documents, and to require the alien, who was required by the preceding clause to depart within six months, to take steps which would enable him to leave the United States by not *failing* to apply for such documents.[5] The bill, both in original and final form, was thus designed to give the aliens ordered deported, who would otherwise "make no effort to obtain the necessary papers," an "incentive to find a country which would be willing to have them" (96 Cong. Rec. 10453), with the reasonable expectation, supported by experience, that this would frequently result in their deportation from the United States.

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[5] This explains the use of both "fail" and "refuse" in Section 20(c).

1. *The Governing Principles.*

In a number of recent cases, this Court has been called upon to decide whether a statute was definite enough to satisfy the requirements of the due process clause. For present purposes, it is sufficient to state that the test is whether a statute is so vague that it does not convey a "sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices." *Jordan* v. *De George,* 341 U.S. 223, 231-232; *Connally* v. *General Construction Co.,* 269 U.S. 385, 391; *Dennis* v. *United States,* 341 U.S. 494, 515; *Winters* v. *New York,* 333 U.S. 507, 518; *Boyce Motor Lines* v. *United States,* decided January 28, 1952. In applying this test, this Court has declared: (1) that the presence of difficult "border line" or "peripheral" cases does not invalidate a statutory provision where there is a hard core of circumstances to which the statute unquestionably applies and as to which the ordinary person would have no doubt as to its application (*Jordan* v. *De George, Dennis* v. *United States,* both *supra; United States* v. *Wurzbach,* 280 U.S. 396, 399; *Robinson* v. *United States,* 324 U.S. 282, 286; *Nash* v. *United States,* 229 U.S. 373), (2) that it is proper to look at "the entire text of the statute" (*Winters* v. *New York,* 333 U.S. 507, 518), (3) that "the particular context is all important" (*American Communications Ass'n* v. *Douds,* 339 U.S. 382, 412), and (4) that the inquiry is whether

the statute is sufficiently explicit to inform those "who are subject to it" (*Connally* v. *General Construction Co., supra*), "those to whom the statute is directed" (*American Communications Ass'n* v. *Douds, supra*). And the Court has, without exception, held (5) that a requirement that conduct be willful, or in bad faith, relieves "the statute of the objection that it punishes without warning an offense of which the accused was unaware" (*Screws* v. *United States,* 325 U.S. 91, 102). "Since the constitutional vice in a vague or indefinite statute is the injustice to the accused in placing him on trial for an offense, the nature of which he is given no fair warning, the fact that punishment is restricted to acts done with knowledge that they contravene the statute makes this objection untenable." *American Communications Ass'n.* v. *Douds, supra,* at p. 413; *United States* v. *Ragen,* 314 U.S. 513, 524; *Gorin* v. *United States,* 312 U.S. 19, 27-28; *Omaechevarria* v. *Idaho,* 246 U.S. 343, 348; *Dennis* v. *United States,* 341 U.S. 494, 515; *Boyce Motor Lines* v. *United States,* decided January 28, 1952; *cf. Winters* v. *New York,* 333 U.S. 507, 519.

All of these criteria of definiteness combine to demonstrate that the statute here involved does not depart from constitutional requirements.

2. *"Travel or other documents necessary for his departure" is not an indefinite phrase.*

a. The phrase found too indefinite by the court below was "travel or other documents necessary to

his departure". We confess to not seeing any basis for the holding that this phrase is too vague for the ordinary person to understand. The statute is concerned with aliens departing for foreign countries. "Travel documents" in that context can have no other meaning except those official documents required in order lawfully to enter another nation.[6] An alien ordered deported would normally understand the phrase to mean passports, visas, or other documents necessary for entrance into a foreign nation. The suggestion by the court below that a "bus ticket to Tia Juana," Mexico, might be deemed sufficient, does not, we submit, comport with the common understanding of the meaning of "travel documents". Such a ticket would not normally be described as a "document", and it would not enable the holder lawfully to enter a foreign country.

b. Thus, if the phrase is merely read in the con-

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[6] "Travel documents" is a term commonly used in connection with entry from one country to another. Thus the term was used in a statute authorizing consular officials to refuse a "visa or other travel document." Act of June 20, 1941, 55 Stat. 252. The same statute earlier states that consular officials can deny "to such alien any immigration visa, passport visa, transit certificate, or other document entitling such alien to present himself for admission into the United States." Similarly, the term has been used in State Department orders and correspondence in the sense of official certificates necessary to enter one country from another. 3 Hackworth, *Digest of International Law*, 456-464, 738-739. The term "passport" is ordinarily restricted to a certificate issued by a country to its citizens who wish to travel in a foreign country. See 8 CFR 176.101. The term "travel document" is used either to refer to a similar certificate issued to an alien, or more broadly to include other types of certificates authorizing entry.

text of the immediate clause in which it is found, there can be no doubt that its meaning would be well understood. Any question as to this should be resolved by a complete reading of subsection (c). For, in the following sentence (*infra*, p. 31) the subsection provides that a sentence thereunder may be suspended if the Government of the United States is unable to secure "passports, other travel documents, or deportation facilities" from the country or countries to which the alien has been ordered deported. This demonstrates—if demonstration be needed—that "travel documents" connote passports or equivalent documents necessary for travel abroad. We have already referred to this Court's decisions holding that not only the "context" of the language in question (*Douds, supra*, at 412) but "the entire text of the statute" (*Winters, supra*, at 518) are to be considered in determining whether a statute is too vague. Obviously it is proper to take into account the next sentence in the same paragraph when it indicates clearly what is meant by the language in question.

c. It is also significant that Section 20(c) is directed only at aliens, all of whom entered the United States from a foreign country, and who are therefore in a peculiarly favorable position to know the meaning of travel and other documents necessary for departing from one country for another. The test, as this Court has stated, is whether the statute is definite enough for those "to

whom [it] is directed" (*Douds, supra*), those who "are subject to it" (*Connally, supra*).

d. Finally the possibility of punishment of the innocent is removed by the unusual double-barreled restriction of the prohibition to persons who "*willfully* fail or refuse to make timely application *in good faith*" for the necessary documents (italics supplied). Even more clearly than in *United States* v. *Ragen*, 314 U.S. 513, 524, can it be said that, "On no construction can the statutory provisions here involved become a trap for those who act in good faith. A mind intent upon willful evasion is inconsistent with surprised innocence." Unquestionably the persons subject to this statute "are not required to act at their peril but only to exercise their judgment in good faith, in order to avoid coming into conflict with the statutes" (*Hygrade Provision Co.* v. *Sherman*, 266 U.S. 497, 501).

This is particularly true as to the requirement in Section 20 (c) that an alien not willfully "refuse" to apply for the necessary documents. See Count IV of the indictment. (R. 2). The word "refuse" in itself connotes deliberate intentional conduct. A person cannot willfully *refuse* to procure the documents without knowing what he is refusing to do. Refusal to do something implies that a person has been informed of what he is supposed to do and requested or ordered to do it. When refusal is charged, the evidence might well show that the immigration authorities have told

an alien precisely what the statute requires,[7] and that the alien has deliberately declined to follow either the statute or the supplementary advice.[8] In such circumstances, an alien's refusal to perform his statutory duty must necessarily stem, not from lack of understanding of his obligation, but from willful determination not to comply.

3. *There is no invalidity with respect to the country to which application should be made.*

The court below also held Section 20(c) invalid because it does not specify the country or countries to which the applicant must make "timely application" for travel documents. The determination of the country to which the alien is required to make

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[7] The Immigration and Naturalization Service has instructed its officers (Operations Instructions, Section 150.6 V and VI, April 12, 1951) to deliver to aliens ordered deported Forms I-228 and I-229, copies of which are annexed hereto as Appendix B (*infra*, pp. 32-35). Form I-229 directs the aliens' attention to the requirements of Section 20(c), and states that:

> Therefore, you will recognize the importance of making every effort in good faith to obtain *passport* or other travel documents so that you may effect your departure pursuant to the said order of deportation within the time prescribed by the quotation above from the Internal Security Act of 1950. [Italics supplied.]

Form I-228, which the alien is requested to fill out, calls for him to specify the country of his choice, and concludes:

> I understand that the Immigration and Naturalization Service will assist me in applying for permission for entry into the country specified by me, but if that country is not willing to permit my entry, I will be deported pursuant to law.

[8] The suggested set of facts would be provable under the present indictment.

application for travel documents takes on specificity when considered in relation to the section as a whole. Section 20(a) (*infra*, p. 25) provides that the alien is free to name the country to which he shall be deported, if it will accept him. If he does not do so (or if he names a country which will not accept him) the Attorney General makes the selection from among the nations specified in the statute. The Attorney General presumably will choose a country to which he thinks it possible to deport the alien.

Thus Congress contemplated that in every case either the alien himself or the Attorney General will have selected a country for deportation. If the alien makes the choice of country, he is not allowed to *fail* to follow through on his selection by not applying for the necessary documents. If the Attorney General determines the country, as he invariably did prior to the 1950 Act, he will normally advise the alien of his decision and ask him to obtain or fill out whatever documents are necessary; the statute makes unlawful the alien's *refusal* to do so. In either situation there can be no uncertainty in the alien's mind as to the country to which he must apply, for it is either a country of his own choice or a nation selected by the Attorney General.

Nor would there be any unconstitutional indefiniteness as to the number of countries to which application must be made. The alien would only have to apply to more than one country selected by the

Attorney General if the first would not admit him and the Attorney General then picked another. In that case, of course, the alternative country would be specifically named, so that there would be no problem of indefiniteness. If the Attorney General has not informed the alien of the country of deportation, then in the light of the prior clause of Section 20(c) which provides that an alien must not "willfully fail or refuse to depart" within six months the alien would seem to have an affirmative duty to choose some country and to apply thereto for travel documents. In this situation, it is clear that an alien who makes *no* application to *any* country has willfully violated the statute.

To what extent, in the rare case where the Attorney General has made no designation and the alien has unsuccessfully but in good faith applied for travel documents to one country, the alien must go further and apply to another would depend on the circumstances of the case[9] and whether he could be said to be acting in bad faith if he failed to do so. It should not be assumed that this case is in that rare class; if the case is tried it will appear that it is not. The fact that there may be uncertainty as to some marginal or unusual applications of the statute would not render the statute as a whole unconstitutionally indefinite. See cases cited at page 13, *supra*. As long as there is a substantial class of

[9] Such as, whether there is another country with which the alien has had such a connection as to make it reasonable to expect that the country might accept him.

cases to which the statute can be validly applied, it should not be held too indefinite on the basis of the bare indictment, without the opportunity of adducing proof at the trial which would show whether or not the case came within the exceptional class.

What has been said (*supra*, pp. 14, 17) about the effect of scienter as an element of the offense upon the claim that the statute is too indefinite, is, of course, equally significant on this aspect of the case. No one can be convicted for not applying to the proper country or countries unless his failure or refusal is willful, in bad faith, which means that no one can be convicted for innocent misconduct. And, as we have noted, where a "refusal" is charged there must be proof that the alien has been told what he must do, and refused to do so—in which case a claim that he did not know what was required of him would clearly be specious.

4. The fact that affirmative action is required does not change the governing principles or their application to this case. The court below was of the view that the principles to which we have referred were not satisfied here because this statute, by prohibiting an omission to act, requires affirmative conduct. In particular, the court thought that this factor made inapplicable the cases holding that statutes are not too indefinite where a violation must be "willful." See p. 14, *supra*. The court below conceded, however, that even when affirmative action is required, it is sufficient that "the command be reasonably specific" (R. 11).

For all of the reasons set forth above, we think that the provision here involved—even apart from the requirements of *scienter*—is specific enough to apprise the normal man of what he must do to avoid a violation. But, in any event, we do not think that the principles differ because affirmative action is required. There is no inherent reason why they should. Whether the Congressional mandate is affirmative or negative, the question is whether a normal person will understand what the statute prohibits or commands, whether he can be punished for conduct which may be innocent because of the vagueness of the law. The requirement of *scienter* is obviously as great a protection whether affirmative or negative action is required. The attempted distinction cannot be reconciled with *United States* v. *Raifen*, 314 U.S. 513, 524, where the statute required affirmative action, the filing of income tax returns with only "reasonable" deductions for salaries. Furthermore, the attempted distinction is unrealistic. It would have been no satisfactory answer for the sheep herdsman in *Omaecheverria* v. *Idaho*, 246 U.S. 343, 348, that he could have avoided grazing his sheep entirely and thus escape a charge of interfering with the "usual and customary" use of a range. Similarly, inaction would have been no answer to the meat dealer in *Hygrade Provision Co.* v. *Sherman*, 266 U.S. 497, 501, or the union leader in *American Communications Ass'n.* v. *Douds*, 339 U.S. 382, 413; both had a right

to go on making their living in their perfectly legal occupations.

Section 20(c) is surely as certain as Selective Service Regulation 626.1(b), which also imposed an affirmative duty on a selected class; it required draft registrants to report "any fact that might result in the registrant being placed in a different classification." This regulation was repeatedly held constitutional in criminal cases against attacks predicated on vagueness. *United States* v. *Wain*, 162 F. 2d 60, 65 (C.A. 2), certiorari denied, 332 U.S. 764; *Stassi* v. *United States*, 152 F. 2d 581 (C.A. 5), certiorari denied, 328 U.S. 842; *United States* v. *Lembo*, 76 F. Supp. 209, 212 (E.D. Pa.), reversed on other grounds *sub nom. United States* v. *Aleli*, 170 F. 2d 18 (C.A. 3); *United States* v. *Weiss*, 65 F. Supp. 556, 558-562 (E.D. N.Y.), affirmed, 162 F. 2d 447 (C.A. 2), certiorari denied, 332 U.S. 767.

5. *The statute is as definite as others held valid by this Court.*

Finally, we think there can be no question that the statutory provision here involved is less vague and indefinite than others which have been upheld by this Court. "Travel or other documents necessary to his departure" and the country to which application must be made are certainly more definite concepts than "so far as practicable" (*Boyce Motor Lines* v. *United States, supra*); "crime involving moral turpitude" (*Jordan* v. *De George, supra*); whether competitive activities are "fair

and open" (*Old Dearborn Co.* v. *Seagram Corp.*, 299 U.S. 183); whether sheep are interfering with the "usual and customary" use of a range (*Omaechevarria* v. *Idaho*, 246 U.S. 343, 348); whether activities are "reasonably calculated" or "tend" to fix prices (*Waters-Pierce Oil Co.* v. *Texas (No. 1)*, 212 U.S. 86); whether a fire is "near" the public domain (*United States* v. *Alford*, 274 U.S. 264); whether income tax deductions are for "a reasonable allowance for salaries or other compensation for personal services actually rendered" (*United States* v. *Ragen*, 314 U. S. 513); see also *Screws* v. *United States*, 325 U.S. 91; *Williams* v. *United States*, 341 U.S. 97; *Nash* v. *United States*, 229 U.S. 373.

CONCLUSION

For the foregoing reasons, the order of the District Court should be reversed.

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APPENDIX A

Section 23 of the Internal Security Act of 1950, 64 Stat. 1010.

SEC. 23. Section 20 of the Immigration Act of February 5, 1917, as amended (39 Stat. 890; 57 Stat. 553; 8 U. S. C. 156), is hereby amended to read as follows:

SEC. 20. (a) That the deportation of aliens provided for in this Act and all other immigration laws of the United States shall be directed by the Attorney General to the country specified by the alien, if it is willing to accept him into its territory; otherwise such deportation shall be directed by the Attorney General within his discretion and without priority of preference because of their order as herein set forth, either to the country from which such alien last entered the United States; or to the country in which is located the foreign port at which such alien embarked for the United States or for foreign contiguous territory; or to any country in which he resided prior to entering the country from which he entered the United States; or to the country which had sovereignty over the birthplace of the alien at the time of his birth; or to any country of which such an alien is a subject, national, or citizen; or to the country in which he was born; or to the country in which the place of his birth is situated at the time he is ordered deported; or, if deportation to any of the said foregoing places or countries is impracticable, inadvisable, or impossible, then to any country which is willing to accept such

alien into its territory. If the United States is at war and the deportation, in accordance with the preceding provisions of this section, of any alien who is deportable under any law of the United States, shall be found by the Attorney General to be impracticable or inconvenient because of enemy occupation of the country whence such alien came or wherein is located the foreign port at which he embarked for the United States or because of other reasons connected with the war, such alien may, at the option of the Attorney General, be deported (1) if such alien is a citizen or subject of a country whose recognized government is in exile, to the country wherein is located that government in exile, if that country will permit him to enter its territory; or (2) if such alien is a citizen or subject of a country whose recognized government is not in exile, then, to a country or any political or territorial subdivision thereof which is approximate to the country of which the alien is a citizen or subject, or with the consent of the country of which the alien is a citizen or subject, to any other country. No alien shall be deported under any provisions of this Act to any country in which the Attorney General shall find that such alien would be subjected to physical persecution. If deportation proceedings are instituted at any time within five years after the entry of the alien, such deportation, including one-half of the entire cost of removal to the port of deportation, shall be at the expense of the contractor, procurer, or other person by whom the alien was unlaw-

fully induced to enter the United States, or, if that cannot be done, then the cost of removal to the port of deportation shall be at the expense of the appropriation for the enforcement of this Act, and the deportation from such port shall be at the expense of the owner or owners of such vessels or transportation lines by which such aliens respectively came, or, if that is not practicable, at the expense of the appropriation for the enforcement of this Act. If deportation proceedings are instituted later than five years after the entry of the alien, or, if the deportation is made by reason of causes arising subsequent to entry, the cost thereof shall be payable from the appropriation for the enforcement of this Act. A failure or refusal on the part of the masters, agents, owners, or consignees of vessels to comply with the order of the Attorney General to take on board, guard safely, and transport to the destination specified any alien ordered to be deported under the provisions of this Act shall be punished by the imposition of the penalties prescribed in section 18 of this Act: *Provided*, That when in the opinion of the Attorney General the mental or physical condition of such alien is such as to require personal care and attendance, the said Attorney General shall when necessary employ a suitable person for that purpose, who shall accompany such alien to his or her final destination, and the expense incident to such service shall be defrayed in the same manner as the expense of deporting the accompanied alien is defrayed. Pending final determination of the deporta-

bility of any alien taken into custody under warrant of the Attorney General, such alien may, in the discretion of the Attorney General (1) be continued in custody; or (2) be released under bond in the amount of not less than $500, with security approved by the Attorney General; or (3) be released on conditional parole. It shall be among the conditions of any such bond, or of the terms of release on parole, that the alien shall be produced, or will produce himself, when required to do so for the purpose of defending himself against the charge or charges under which he was taken into custody and any other charges which subsequently are lodged against him, and for deportation if an order for his deportation has been made. When such an order of deportation has been made against any alien, the Attorney General shall have a period of six months from the date of such order within which to effect the alien's departure from the United States, during which period, at the Attorney General's discretion, the alien may be detained, released on conditional parole, or upon bond in an amount and specifying such conditions for surrender of the alien to the Immigration and Naturalization Service as may be determined by the Attorney General. If deportation has not been practicable, advisable, or possible, or departure of the alien from the United States has not been effected, within six months from the date of the order of deportation the alien shall become subject to such further supervision and detention pending eventual depor-

tation as is authorized hereinafter in this section. The Attorney General is hereby authorized and directed to arrange for appropriate places of detention for those aliens whom he shall take into custody and detain.

(b) Any alien, against whom an order of deportation, heretofore or hereafter issued, has been outstanding for more than six months shall, pending eventual deportation, be subject to supervision under regulations prescribed by the Attorney General. Such regulations shall require any alien subject to supervision (1) to appear from time to time at specified times or intervals before an officer of the Immigration and Naturalization Service for identification; (2) to submit, if necessary, to medical and psychiatric examination at the expense of the United States; (3) to give information under oath as to his nationality, circumstances, habits, associations, and activities, and such other information whether or not related to the foregoing as the Attorney General may deem fit and proper; and (4) to conform to such reasonable written restrictions on his conduct or activities as are prescribed by the Attorney General in his case. Any alien who shall willfully fail to comply with such regulations, or willfully fail to appear or to give information or submit to medical or psychiatric examination if required, or knowingly give false information in relation to the requirements of such regulations, or knowingly violate a reasonable restriction imposed upon his conduct or activity, shall upon conviction be guilty of a felony, and shall be

fined not more than $1,000 or shall be imprisoned not more than one year, or both.

(c) Any alien against whom an order of deportation is outstanding under (1) the Act of October 16, 1918, as amended (40 Stat. 1012, 41 Stat. 1008, 54 Stat. 673; 8 U. S. C. 137); (2) the Act of February 9, 1909, as amended (35 Stat. 614, 42 Stat. 596; 21 U. S. C. 171, 174-175); (3) the Act of February 18, 1931, as amended (46 Stat. 1171, 54 Stat. 673; 8 U. S. C. 156a); or (4) so much of section 19 of the Immigration Act of 1917, as amended (39 Stat. 889-890; 54 Stat. 671-673; 56 Stat. 1044; 8 U. S. C. 155) as relates to criminals, prostitutes, procurers or other immoral persons, anarchists, subversives and similar classes, who shall willfully fail or refuse to depart from the United States within a period of six months from the date of such order of deportation, or from the date of the enactment of the Subversive Activities Control Act of 1950, whichever is the later, or shall willfully fail or refuse to make timely application in good faith for travel or other documents necessary to his departure, or who shall connive or conspire, or take any other action, designed to prevent or hamper or with the purpose of preventing or hampering his departure pursuant to such order of deportation, or who shall willfully fail or refuse to present himself for deportation at the time and place required by the Attorney General pursuant to such order of deportation, shall upon conviction be guilty of a felony, and shall be imprisoned not more than ten years: *Provided*, That this sub-

section shall not make it illegal for any alien to take any proper steps for the purpose of securing cancellation of, or exemption from such order of deportation or for the purpose of securing his release from incarceration or custody: *Provided further,* That the court may for good cause suspend the sentence of such alien and order his release under such conditions as the court may prescribe. In determining whether good cause has been shown to justify releasing the alien, the court shall take into account such factors as (1) the age, health, and period of detention of the alien; (2) the effect upon the national security and public peace or safety; (3) the likelihood of the alien's following a course of conduct which made or would make him deportable; (4) the character of the efforts made by such alien himself and by representatives of the country or countries to which his deportation is directed to expedite the alien's departure from the United States; (5) the reason for the inability of the Government of the United States to secure passports, other travel documents, or deportation facilities from the country or countries to which the alien has been ordered deported; and (6) the eligibility of the alien for discretionary relief under the immigration laws.

(d) Should any alien subject to the provisions of subsection (c) unlawfully return to the United States after having been released for departure or deported pursuant to this section, the previous warrant of deportation against him shall be considered as reinstated from its original date of issuance.

(e) If any alien subject to this section is able to depart from the United States, except that he is financially unable to pay his passage, the expense of such passage to the country to which he is destined may be paid from the appropriation for the enforcement of this Act, unless such payment is otherwise provided for under this Act.

APPENDIX B

Form I-229
(Ed. I-26-51)

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

Date:
File No:

An order, of which you have been notified, directing your deportation from the United States was entered on ....., on the grounds that (date)

Arrangements to effect your deportation pursuant to such order are being made and when completed you will be notified when and where to present yourself for deportation.

In this connection you are reminded that Section 23 of the Internal Security Act of 1950, which was enacted by Congress on September 23, 1950, declares that any such alien "who shall willfully fail or refuse to depart from the United States within a period of six months from the date of such order of

deportation, or from the date of the enactment of" that Act "whichever is the later, or shall willfully fail or refuse to make timely application in good faith for travel or other documents necessary to his departure, or who shall connive or conspire, or take any other action, designed to prevent or hamper or with the purpose of preventing or hampering his departure pursuant to such order of deportation, or who shall willfully fail or refuse to present himself for deportation at the time and place required by the Attorney General pursuant to such order of deportation, shall upon conviction be guilty of a felony, and shall be imprisoned not more than ten years. Provided, That this subsection shall not make it illegal for any alien to take any proper steps for the purpose of securing cancellation of or exemption from such order of deportation or for the purpose of securing his release from incarceration or custody: * * *"

Therefore, you will recognize the importance of making every effort in good faith to obtain passport or other travel documents so that you may effect your departure pursuant to the said order of deportation within the time prescribed by the quotation above from the Internal Security Act of 1950.

Very truly yours,

Form I-228
(Ed. I-26-51)

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

Date: .....
File No: .....

My name is .....
My address is .....
I acknowledge that I have been notified that an order for my deportation from the United States to ..... was entered on .....
on the grounds that (Date)

Section 20(a) of the Immigration Act of 1917, as amended by the Internal Security Act of 1950, provides that the deportation of aliens shall be directed to the country specified by the alien, if it is willing to accept him into its territory; otherwise, such deportation will be directed by the Attorney General to some other country.

Therefore, I specify ..... as the country of my choice.

I (have / have not) applied for and (have / have not) received necessary permission to enter that country.

I understand that the Immigration and Naturalization Service will assist me in applying for permission for entry into the country specified by me, but if that country is not willing to permit my entry, I will be deported pursuant to law.

(Signature) .....

(Witness) .....

(Title) .....

Immigration and Naturalization Service

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